

PUBLIC PROSECUTOR

v.

MOHD. OMAR LOPEZ @ GEORGE
ANTHONY LOPEZHIGH COURT, KUCHING
DATUK CHONG SIEW FAI J.
[CRIMINAL APPEAL NO. KG. 5 OF 1990]
1 DECEMBER 1992

CRIMINAL LAW: Importing prohibited vehicle - Whether offence committed by defendant - Section 135(1)(a) of the Customs Act, 1967; forfeiture of vehicles - Forfeiture despite acquittal - Whether valid - Vehicles subject matter of an offence that had been committed - Effect - Section 127(1) of Customs Act.

In the magistrate's court at Kuching, the Accused was charged with the following two offences

- (1) making a customs import declaration containing an incorrect particular, under s. 133(1)(a) of the Customs Act 1967 (the Act), and
- (2) concerned in importing prohibited goods, namely 1 Nissan Safari Jeep and 4 units of Toyota Hi-Ace van, an offence under s. 135(1)(a) of the Act and punishable under s. 135(1)(iii) thereunder.

Since 1974 the Accused had been in business of selling vehicles imported from Japan. Between 1980-1983 he had been using a letter from the Ministry of Trade and Industry Malaysia at Kuching stating that he could import cars, vans and jeeps. In 1983, he obtained an import licence for the import of thirty units of reconditioned cars under tariff classification number 8702129. In May 1983, a number of vehicles, including the jeep and the four vans which were the subject matter of the charge, arrived at Kuching and were cleared by the customs authorities. The Accused took delivery of them and paid the customs duty on them. On 20 June 1983, the accused obtained an import licence for the five vehicles, as they were under tariff Code 8702103 with retrospective effect from the date of the arrival. Two days later, the licence was revoked, and the vehicles seized. The prosecution claimed that the licence was revoked on the ground that it was not valid, alleging that the Accused had obtained the shipment of the five vehicles by claiming that it was a wrong shipment, when

in fact the Accused had ordered the vehicles.

The Accused, on the other hand, claims that he had imported the five vehicles believing that he had the authority to do so under the letter from the Minister of Trade and Industry and that he had been importing vehicles with tariff no. 8702103 since 1980. He denied having obtained the import licence dated 20 June 1983 by claiming that the assignment was a wrong one.

The Magistrate accepted the evidence of the Accused, and acquitted and discharged him of both charges. However, the jeep and the four vans were forfeited.

The prosecution appealed against the acquittal and discharge under the second charge; and the Accused against the order of forfeiture of the five vehicles.

Held:

- [1] The decision of the acquittal ought not to be interfered with. In the circumstances of the case, it was reasonable and proper for the learned Magistrate to come to the conclusion she did, that based on previous transactions, the Accused was justified in labouring under the impression that he could import reconditioned vehicles under the tariff classification no. 8702129. The burden of the prosecution is to prove not only that the finding of the Magistrate was not justified in law or by the evidence but also that the respondent is guilty beyond all reasonable doubt. A decision of acquittal ought not to be interfered with unless the appellate court comes to the conclusion that the appraisal of evidence made by the learned Magistrate is so unreasonable or perverse as affording a compelling reason to do so.
- [2] However, despite the acquittal of the accused, the five vehicles were rightly forfeited. On satisfactory proof of conditions (a) that an offence against the Act has been committed; and (b) that the goods were the subject matter of or were used in the commission of the offence, at s. 127 (1) of the Act, forfeiture of the goods necessarily follows. The fact that an accused for some reason or other, is not guilty or that no one is convicted, is not a relevant factor. In the present case, an offence against the Act had been committed. It

was clear beyond all reasonable doubt that the five vehicles were prohibited goods and were imported contrary to the prohibition.

[Appeal against the acquittal dismissed. Cross-appeal against forfeiture also dismissed.]

Cases referred to:

PP v. Koo Cheh Yew & Anor. [1980] 2 MLJ 235 (*refd*)
Keng Soon Finance Berhad v. Pegawai Kanan Kastam,
Johore Bahru [1981] 2 MLJ 249 FC at 251 (*folll*)
PP v. Lee Wye Kheng [1978] 1 MLJ 38 (*refd*)
PP v. Mat Nawib bin Ismail [1987] 2 MLJ 366 (*cit*)
Syed Abdullah v. PP [1964] 30 MLJ 48 (*folll*)

Legislation referred to:

Customs Act 1967, ss. 111A(2), 127(1), 133(1)(a),
135(1)(a), 135(1)(iii)
Courts of Judicature Act 1964, s. 66(1)

For the appellant - Mohamad Zaki bin Yassin, DPP
For the respondent - Fabian Lim; M/s. Chua, Khaider,
Lim & Co.

JUDGMENT

Chong Siew Fai J:

In the Magistrates' Court at Kuching, the Accused was charged with 2 offences that is,

- (1) making a customs import declaration containing an incorrect particular, under s. 133(1)(a) of the Customs Act 1967 (the Act), and
- (2) concerned in importing prohibited goods namely 1 Nissan Safari jeep (Exh. P14) and 4 units of Toyota Hi-Ace van (Exh. P15), an offence under s. 135(1)(a) of the Act and punishable under s. 135(1)(iii) thereunder.

At the conclusion of the trial, the Accused was acquitted and discharged of both charges. The jeep and the four vans, however, were forfeited.

Against the decision both sides appealed, the prosecution, against the acquittal and discharge under the second charge; and the Accused, against the order of forfeiture of the five vehicles.

Since there is no appeal against the first charge, nothing more need be said about it. The second charge (amended in the course of the trial) reads:

a That you, being the Manager of Syarikat Omar Developer, No. 48, Ang Cheng Ho Road, Kuching, at about 2.30 p.m. on 26 May 1983 at Customs Office, Kuching Port, Kuching were concerned in importing prohibited goods, to wit, one unit Nissan Safari Jeep and four units Toyota Hi-Ace Van with a total value of RM27,687.60, such goods being goods the import of which is prohibited except under and by virtue of a valid Import Licence issued by the Director General of Customs under the Customs (Prohibition of Imports) Order 1981 (PU(A)339) and thereby committed an offence by virtue of s. 135(1)(a) and punishable under s. 135(1)(iii) of the Customs Act 1967.

c The evidence shows as follows:

Prosecution Case

Since 1974, the Accused, under the firm-name of Syarikat Omar Developer owned and managed by him, had been in the business of selling vehicles imported from Japan. The firm was given a quota to import thirty vehicles each year. In reply to his application dated 30 August 1980, the director of the Ministry of Trade and Industry Malaysia, at Kuching, one Fakurruddin bin Haji Eshak, wrote to the Accused's firm a letter dated 3 September 1980 (Exh. D1) bearing the subject "Permohonan Untuk Mengimpot Tujuh Yunit Hi-Ace Com-muter Van". In that letter, Fakurruddin stated to the effect that the Accused's firm could use part of the quota allocated to the firm for the purpose (untuk tujuan tersebut). The Accused said between 1980 and 1983 he had been using Exh. D1 to import cars, vans and jeeps.

f PW10 Mohd. Aris bin Ariffin, at the material time in 1983, was the director of the Trade Division in the Ministry of Trade and Industry, Sarawak Branch. Acting on behalf of the Director-General of Customs, he was also responsible for issuing licences for the import and export of prohibited goods. Mohd. Aris said on 1 December 1982, the Accused's firm applied for import of thirty units of reconditioned cars under tariff classification No. 8702129. He referred the matter to the Head Office at Kuala Lumpur where a committee decided and approved the application. Mohd. Aris accordingly informed the Accused's firm and an import licence (Exh. P5) dated 11 February 1983 was issued. The licence was for the import of thirty units of reconditioned cars under tariff classification No. 8702129 and not for No. 8702103.

On or about 25 May 1983 the ship the "Chosei Maru" carrying, *inter alia*, twenty five vehicles of the Accused's firm including the jeep Exh. P14 and the four vans Exh. P15 (the subject matter of this amended charge) arrived at Kuching. Documents including the Customs application (Customs No. 8) dated 24 May 1983 (Exh. P1) and the import licence Exh. P5 were presented to the Customs authorities. On 26 May 1983 the Superintendent of Customs Osman bin Sawi (PW3) nominated Nawawi bin Ali (PW8) and Morshidi bin Osen (PW9) to examine the vehicles. Examination was carried out and Morshidi subsequently returned to Osman with endorsement at the reverse of Exh. P1 that the vehicles had been "checked and examined and found correct".

The Accused took delivery of the vehicles on 28 May 1983 and customs duty was paid on 30 May 1983.

PW10 Mohd. Aris said on 16 June 1983 the Accused went to see him asking for import licence for the five vehicles under tariff Code 8702103 on the ground that they were not ordered by him. He said upon being requested, the Accused produced 2 telexes on the following day to substantiate his case, which convinced PW10. PW10 then referred the matter to the Committee in Kuala Lumpur. On 20 June 1983 approval was obtained and PW10 issued the import licence (Exh. P9) for the five vehicles. The licence though dated 20 June 1983 expressly validated the five vehicles that arrived by the vessel on 24 May 1983.

PW10 further said on 22 June 1983 (2 days later) Masri bin Tan Sri Dato Haji Mohd. (PW20) came to see him. PW10 said Masri told him that it was not a case of wrong shipment and that he had evidence that the Accused had ordered the vehicles and that since the vehicles had been released before the issue of the import licence, the licence was not valid. PW10 said he then related the matter to the secretary of the Committee in Kuala Lumpur, one Kabul, who told him that since the basis of approval was not correct, he (PW10) could withdraw the licence.

PW10 withdrew the licence on the same day (22 June 1983). In re-examination, he said he acted independently in his own capacity in revoking the import licence.

With regard to the assertion of PW20 that he had evidence that the Accused ordered the

vehicles, PW10 said he believed PW20. The reason he gave for believing PW20 was:

he (PW20) was a Customs Officer in the Preventive Section and I had to take his word.

As regards the effect of the import licence dated 20 June 1983 (Exh. P9), PW10 agreed, under cross-examination, that the licence was for the consignment of the five vehicles in question that arrived on 24 May 1983. He said he had given retrospective approval, that by the licence the shipment was validly licensed and that the importer had not committed any breach. He agreed that the purpose of the import licence was to validate the consignment of the five vehicles that arrived by the Chosei Maru on 24 May 1983.

PW10 agreed that the Accused's firm had a quota for thirty units of passenger and non-passenger cars, and that there was no necessity for the Accused to lie about wrong shipment.

PW20 Masri is the investigating officer in this case. Upon receipt of instructions from a senior officer, he directed a search in the Accused's premises and had some documents seized. He said from the documents seized, particularly the letter dated 5 September 1979 (Exh. P12) and the Letter of Credit dated 28 March 1983 (Exh. P8), he was satisfied that the Accused had no valid import licence for the five vehicles and the question of wrong shipment did not arise. He had the vehicles seized. PW20 also said upon his investigation at the Port, he discovered that the import licence for the five vehicles was issued after the vehicles had reached the Port at Kuching, and, for that reason, was, according to him, invalid. He then went to see PW10. He said PW10 told him that the licence was issued because the Accused said the vehicles were sent to his firm without his knowledge. PW20 said upon seeing the Letter of Credit, PW10 revoked the import licence Exh. P9.

PW20 Masri however agreed, under cross-examination, that if the vehicles were wrongly shipped to the Accused's firm, then the Accused could not be held liable.

Defence Case

In his evidence the Accused, by referring to Exh. D1 dated 3 September 1980, said he was

told by Fakurruddin, Pengarah Bahagian Perdagangan, Kementerian Perdagangan dan Perindustrian, Kuching, that he could use the existing quota of thirty units of vehicles to import Hi-Ace Commuter vans, and he honestly believed that the letter Exh. D1 gave him the authority to import the vans. He said between 1980 and 1983 he had imported vans and jeeps by using or by virtue of Exh. D1.

For the shipment in question arriving on or about 25 May 1983, the Accused completed the application form Exh. P1 with the tariff Code 8702103 for the vans and jeep. He said with Exh. P1, he also submitted the bill of lading (Exh. P2), Invoice from the exporter (Exh. P3), a letter from Harrisons & Crosfield (S) Sdn. Bhd. (Exh. P4) and the import licence Exh. P5. The customs officials checked the vehicles as well as against the documents and found them to be correct and endorsed thereon accordingly. The Accused took delivery of the vehicles on 28 May 1983 and paid the customs duties on 30 May 1983.

The Accused further said that after the payment of the customs duties, a Customs Officer told him that Masri (PW20) was trying to create trouble for him (the Accused). The Accused then obtained the import licence dated 20 June 1983 (Exh. P9) which retrospectively validated the import of the five vans and jeep above mentioned. The Accused, however, denied having told PW10 Aris about wrong consignment and producing the telexes. He said he had been advised by Fakurruddin that he could use the quota given and there was no need for him to lie. He said what he told Aris was that the Customs wanted "a quota of 8702103 for the five units of van". According to him, he had, since 1980, imported about sixty vehicles with tariff No. 8702103 based on Exh. D1.

As regards his knowledge of the vans and jeep coming under tariff Code 8702103, the Accused said he came to know about it only when he was told that Masri was going to give him trouble, which resulted in his seeing PW10 Asri on 17 June 1983 and obtaining the Licence dated 20 June 1983 (Exh. P9) which was back-dated to cover the shipment that had arrived on 24 May 1983. According to the Accused, PW5 Haji Ali advised him to get import licence for vehicles under tariff Code 8702103. It was only then that he came to know the need for such import licence for vans. Despite his being previously

a advised to be able to use Exh. D1 for the import, he went to get a licence just to be doubly sure of not getting into trouble.

The Accused said the five vehicles were seized on 23 June 1983. On 30 June 1983 he received a letter dated 22 June 1983 stating that the licence dated 20 June 1983 (Exh. P9) had been cancelled. In short, the Accused's case is not that he was unaware of the prohibition, but that since 1980 he had been allowed to import used and reconditioned vans and jeeps on the strength of Exh. D1, without an import licence expressly specifying tariff Code 8702103. The prosecution has not adduced any evidence to discredit or rebut this. On the other hand, there is clear evidence that after the goods had been imported, import licence Exh. P9 was given to him with retrospective effect though it was subsequently revoked.

d **Learned Trial Magistrate's Judgment**

In her judgment the learned trial Magistrate accepted the evidence of the Accused that since 1980 the Accused had, by virtue of the letter dated 3 September 1980 (Exh. D1) from Fakurruddin, the Director of the Ministry of Trade and Industry, actually imported vans and jeeps without any query or difficulty so long as the importation was kept within the quota of thirty vehicles; she found that the Accused had been doing this since 1980 and that there was no reason for the Accused to foresee that he would encounter any problem on the occasion in question (that is, for the shipment in May 1983). The learned trial Magistrate considered (not unjustifiably) that what the Accused did to get an import licence for cars with tariff Code 8702103 was to rectify what the customs officials regarded to be wrong. The learned trial Magistrate accepted the Accused to be truthful. She did not believe that the Accused would have imported the vans and the jeep if he did not have the necessary import licences. In other words, to my mind, what the learned trial Magistrate concluded was that if the Accused had not believed and relied on the representation of Fakurruddin as expressed in Exh. D1, the Accused would not have imported the vehicles without an express import licence specifying the requisite tariff code. She entertained serious doubt of the prosecution case for not calling Kabul or any of the committee members in Kuala Lumpur, and despite the subsequent revocation, she attached material

significance to the grant of the licence Exh. P9 with retrospective effect. She found that the Accused had raised a reasonable doubt in the prosecution case.

Appeal

For the prosecution it was contended that the import licence Exh. P9 dated 20 June 1983 was irrelevant as it was issued subsequent to the importation and the release of the vehicles and that it was, in any event, revoked on 22 June 1983. It was also contended that the learned trial Magistrate did not consider the Accused's allegation of wrong shipment and that the Accused in fact had ordered the vehicles.

Relevancy governs admissibility. In the instant case it is the defence case that despite his past experience of importing reconditioned vans and jeeps by virtue of import licence Exh. P5 without any problem, he proceeded, on the advice of a customs officer, to acquire and did acquire Exh. P9. It is part of the defence case in answer to the charge. The Accused said he was advised by PW5 Haji Ali to obtain an import licence for the used vans and jeep under tariff Code 8702103, that he had been importing such types of vehicle based on Exh. D1 since 1980 and it was only on this occasion in June 1983 that he was told and came to know that a separate import licence was necessary. In my judgment, Exh. P9 cannot be said to be irrelevant, though its weight and effect would be a different matter, depending on the facts and circumstances of the case. As regards the contention that the learned trial Magistrate had not considered the defence case that the Accused allegedly put up a case of wrong shipment, a perusal of the judgment will show that this had been considered. See page 135 of the Appeal Record where the learned trial Magistrate said:

There were various allegations made against the Accused... that he lied to PW10... about the shipment of the consignment etc.

However, it was rightly pointed out that the learned trial Magistrate had not made any specific finding as to whether the Accused had told PW10 Mohd. Aris on 16 June 1983 about wrong shipment of the used vans and jeep by the supplier, as alleged by Mohd. Aris. The Accused denied this, and said that he had ordered the vehicles. It would not be safe and appropriate at the appellate stage for me to

come to any finding on the issue, relying solely on the contradictory evidence. In any event, for reasons that I would give in a moment regarding the previous transactions, the issue, in my judgment, has little significance.

The prosecution also submitted on the telexes allegedly produced by the Accused to Mohd. Aris. As these were not tendered as exhibits, I do not think much could be made out of it.

For the prosecution it was contended that the import licence Exh. P5 entitled the Accused to import used and reconditioned cars under Code No. 8702129 only and not used and reconditioned vehicles under Code classification 8702103. It was also contended that despite PW9 the examining officer's finding that the vehicles were correctly declared as stated in the Import Declaration Exh. P1, that did not mean that the Accused had an import licence to import used and reconditioned vans and jeeps. With respect, the above contentions failed to take into appropriate account the defence case. In *PP v. Koo Cheh Yew & Anor.* [1980] 2 MLJ 235 on a reference of questions of law under s. 66(1) of the Courts of Judicature Act 1964, the Federal Court (*albeit* Suffian LP dissenting) held that in a charge of being concerned in importing prohibited goods,

- (1) it was a valid defence if an Accused was able to prove on a balance of probabilities that he could not have reasonably known of the prohibition; and
- (2) the Court is entitled to take into consideration (or cognisance) of all the circumstances of the case that point to an innocent mind of the accused before arriving at a verdict.

In our instant case the defence of the Accused is that he had been importing vans based on Exh. D1 dated 3 September 1980 since 1980 (Appeal Record page 109). Exh. D1, it may be recalled, was to the effect that the Accused was advised that he could use part of the quota to import vans. Exh. D1 was written by Fakurruddin who was not called. As there was, on the evidence, only one quota, it could only mean Exh. P5. In his evidence the Accused said he had been importing vans based on Exh. D1 since 1980 and there was no serious challenge and no rebuttal of this. The fact that tariff Code 8702103, as opposed to 8702129, was given in the import application Exh. P1 indicates that

the Accused had no intention to conceal that he was importing the used and reconditioned vans and jeep, and also tends to lend some support to the Accused's evidence of previous importation of the same types of vehicles on the strength of Exh. D1. Otherwise it would have been arguably more likely that he would have employed Code 8702129 for the used and reconditioned vans and jeep in order to conform with the import licence Exh. P5 which specified Code 8702129.

In the circumstances, it was reasonable and proper for the learned trial Magistrate to come to the conclusion, as she did, that based on previous transactions, the Accused was justified in labouring under the impression that he could import reconditioned vans and jeeps under Import Licence Exh. P5 so long as the quota of thirty units was not exceeded.

I would venture to add that the circumstances of the instant case are such that the decision of acquittal ought not be interfered with even applying the minority view of Suffian LP (as he then was) in *PP v. Koo Cheh Yew & Anor.*, *supra*.

For my part, after reading the evidence adduced, I cannot help doubting that all the relevant truths had been disclosed. However, this is an appeal against acquittal. The burden is on the prosecution to prove not only that the finding of the learned trial Magistrate was not justified in law or by the evidence but also that the respondent was guilty beyond all reasonable doubt. This Court, as the appellate Court, has to be satisfied not only that the offence has been proved beyond all reasonable doubt but also that it is difficult, if not impossible, to see how a contrary view can be sustained on the material available in the case. The decision of acquittal ought not be interfered with unless the appellate Court comes to the conclusion that the appraisal of evidence made by the learned trial Magistrate is so unreasonable or perverse as affording any compelling reason to do so.

On the evidence, I am not persuaded that the learned trial Magistrate was not entitled to come to the conclusion as she did.

The appeal against acquittal is dismissed.

a *Forfeiture*

I now come to the cross-appeal of the Accused against the order of forfeiture of the five vehicles.

Section 127(1) of the Act provides:

- b** An order for the forfeiture or for the release of anything liable to forfeiture under this Act shall be made .. and an order for the forfeiture of goods shall be made if it is proved to the satisfaction of the Court that an offence against this Act or any regulation made thereunder has been committed and that the goods were the subject matter of or were used in the commission of the offence notwithstanding that no person may have been convicted of such offence.
- c**

To my mind, the provision of the above subsection is clear. It is mandatory that the Court orders forfeiture notwithstanding that there may be no conviction if the following two conditions are proved to the satisfaction of the Court:

- d** (a) that an offence against the Act has been committed; and
- e** (b) that the goods were the subject matter of or were used in the commission of the offence.

As stated in the judgment delivered by Abdul Hamid FJ (as he then was) in *Keng Soon Finance Berhad v. Pegawai Kanan Kastam, Johore Bahru* [1981] 2 MLJ 249 FC at 251:

- f** The fundamental question that calls for determination is whether there is proof to the satisfaction of the Court that an offence against the Ordinance (similarly the Act) has been committed and whether the goods are the subject matter of the offence ...
- g**

It seems to me clear that on satisfactory proof of the above conditions (a) and (b) of s. 127(1), forfeiture of the goods involved necessarily follows. The fact that the Accused person, for some reason or other, is not guilty or that no one is convicted is not a relevant factor.

- h** In *PP v. Lee Wye Kheng* [1978] 1 MLJ 38 the Accused was acquitted because he had no knowledge that the goods were prohibited but the goods were forfeited because an offence against the Act had been committed and the prohibited goods were the subject matter of the offence.
- i**

In our instant case, it is clear beyond all reasonable doubt that the jeep and the 4 vans (all used and reconditioned) Exh. P14 and Exh. P15, were prohibited goods and were imported contrary to the prohibition. An offence against the Act had been committed and the five vehicles were the subject matter of the offence. Hence despite the acquittal of the Accused, the five vehicles were rightly forfeited.

The case of *PP v. Mat Nawi bin Ismail* [1987] 2 MLJ 366 cited by Counsel for the Accused is of no assistance to the Accused. There, although the Accused was convicted of an offence under s. 111A(2) of the Act (that is, offence of failing to comply with the signal of a customs officer to stop for customs examination), that is not an offence relating to goods. No offence at all had been committed in respect of the goods. The car conveying the goods therefore could not be said to have been used for the commission of any offence under the Act respecting which offence the goods were the subject matter. Hence no question of forfeiture under s. 127 of the Act arose in the circumstances.

The other case of *Syed Abdullah v. PP* [1964] 30 MLJ 48 cited for the Accused upheld the order of confiscation of the rice and the boat because the rice was the subject matter of the offence while the boat was used to convey the rice. The *ratio decidendi* of the case in fact supports the order of forfeiture in our instant case.

For the above reasons, the cross-appeal is also dismissed. The order of forfeiture of the five vehicles (Exh. P14 and Exh. P15) is affirmed.

SYED AMAN SYED HASSAN

v.

MARA INSTITUTE OF TECHNOLOGY

HIGH COURT, KUALA LUMPUR
DATO' LIM BENG CHOON J.
[CIVIL SUIT NO. P 559 OF 1983]
20 NOVEMBER 1992

CONTRACT: Allegation of breach of contract of employment - Plaintiff seeking a declaration that his employment has not been terminated - Principles applicable to grant of declaration on a contract of service.

The plaintiff was appointed to the post of a "warden" by the defendant at their branch campus in Kota Kinabalu although the post of warden was non-existent at that time and the salary paid to the plaintiff was that of a hostel superintendent.

Upon the subsequent creation of the post of warden, the plaintiff insisted upon being appointed to the said post although his qualifications were insufficient to entitle him to the said post.

The defendant subsequently discovered that the plaintiff had furnished false information in his application for employment and when confronted with the fact, the plaintiff opted to resign from his employment, which resignation was accepted by the defendant. Subsequently the plaintiff wrote to the defendant applying to withdraw his letter of resignation which application was rejected by the defendant.

The plaintiff sought a declaration that he was at all material times an employee of the defendant and alternatively for damages for breach of contract on the grounds that his letter of appointment was to the position of "warden" but he was instead appointed a hostel superintendent.

Held:

[1] The relationship of master and servant is essentially contractual. It is created and continued with mutual consent. A letter of resignation which is submitted causes the contract to lose the bilateral relation needed and dissolves the relation created.

[2] Even if the plaintiff did not resign and his services were terminated, there are no special